



Biennial Report Regarding the  
Office of Violent Sex Offender Management  
September 1, 2011 – December 1, 2012

Prepared for the  
Office of the Governor, Lieutenant Governor, and Speaker of the House of Representatives  
Pursuant to Section Sec. 420A.007, Government Code

January 1, 2013

## **OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT**

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### ***BOARD***

#### **Mr. Dan Powers, LCSW, LSOTP, Chair**

Senior Vice President of Clinical Services at the Children's Advocacy Center  
Collin County, Texas

#### **Ms. Christy Jack, Member**

Chief Prosecutor of Criminal District Court #3  
Tarrant County, Texas

#### **Mr. Leo Longoria, Member**

Retired Chief of Police  
Hidalgo County, Texas

### ***Board Overview***

The Office of Violent Sex Offender Management is a state agency which performs the functions relating to the civil commitment of sexually violent predators and management of sex offenders. The office is governed by a board composed of the following three members appointed by the governor:

- (1) one member experienced in the management of sex offenders;
- (2) one member experienced in the investigation or prosecution of sex offenses; and
- (3) one member experienced in counseling or advocating on behalf of victims of sexual assault.

Members of the board serve staggered two-year terms. Two members' terms expire February 1 of each even-numbered year and one member's term expires February 1 of each odd-numbered year.

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### ***OFFICE OF VIOLENT SEX OFFENDER, EXECUTIVE STAFF***

**Allison Taylor**, Executive Director

**Celeste Blackburn**, General Counsel

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## Objectives

- Eliminate the proliferation of sexual assault and enhance protection of victims;
- Increase awareness by educating, training, and disseminating information regarding the most current empirical research on effective management practices to the community and professional organizations/agencies regarding the systematic management of sex offenders;
- Enhance public safety through the systematic management and treatment within the outpatient sexually violent predator treatment program;
- Provide guidance and recommendations based on empirical research regarding sex offender legislation and public policy;
- Disseminate information regarding the management of sex offenders to the public and promote and enhance the coordination and communication between members of containment model agencies;
- Enhance collaboration and communication among states regarding effective management strategies for extra-jurisdictional sex offenders; and
- Promote research in sex offender management strategies, assessment, treatment, recidivism, and sexual assault.

## Office of Violent Sex Offender Management (OVSOM)

### Agency History

In 2011, the 82nd Legislature Senator Florence Shapiro re-filed the bill (SB 166) and Representative Jerry Madden filed the companion bill (HB236) to create a new state agency to perform the functions relating to the outpatient sexually violent predator treatment program. The bill amended the Government Code by adding a new Chapter 420A titled “Office of Violent Sex Offender Management”. The bill was amended on the floor of the House of Representatives to administratively attach the new agency to the Department of State Health Services solely for administrative support as necessary to carry out the purpose of the OVSOM. The effective date was September 1, 2011.

### Mission

The Office of Violent Sex Offender Management’s mission is to enhance public safety by developing and implementing strategic management policies to protect the citizens of Texas and enhance protection of victims and potential victims through research based management of sexually violent predators and sex offenders.

### Philosophy

The Office of Violent Sex Offender Management recognizes that the civil commitment of sexually violent predator to the long-term comprehensive and offense specific supervision and treatment of sexually violent predators is necessary for the protection of the citizens of the State of Texas (Health and Safety Code, Chapter 841).

**OVSOM Rules** (Title 37. Public Safety and Corrections Part XVI. Office of Violent Sex Offender Management Chapter 810. Civil Commitment ). Currently, the OVSOM rules are in the process of final adoption with the Texas Register.

**Texas Civil Commitment-Outpatient Sexually Violent Predator Treatment Program  
(OSVPTP)  
Health & Safety Code, Chapter 841**

**Texas Legislative History**

In 1995, the 74th Texas Legislature first contemplated the sexually violent predator act with HB 595 by Representative Greenberg, Hochberg, and Danburg et. al., but the bill died in the House Criminal Jurisprudence committee.

In 1997, the 75th Legislature considered SB 77 by Senator John Whitmire (Houston) et. al. and authored by Senator Florence Shapiro (Plano) which would provide for the involuntary commitment of sexually violent predators. The measure died in committee, partly because of potential constitutional issues concerning similar laws and lack of appropriations (\$10.4 million in renovations for a 96 bed facility, \$3 million in assessments per year, \$78,000 per SVP per year for providing care, treatment, security, food, laundry, managerial support, and administrative staff). A key question appeared to be whether it was constitutional to involuntarily commit people after they had completed criminal sentences. The Legislature directed an interim committee to study SVP laws and the need for the law in Texas.

In 1999, Texas Senate Bill 365 expanded the Council on Sex Offender Treatment's (CSOT) duties to include the administration and implementation of the OSVPTP, the first outpatient civil commitment program in the United States.

In 2003, the 78th Legislature SB 871 by Senator Florence Shapiro amended Health & Safety Code, Chapter 841 to require the court to appoint an attorney if the State Counsel For Offenders (SCFO) cannot represent the SVP. The bill added an additional member from the CSOT to the Multi-disciplinary Team (MDT). It increased the date from 60 days to 270th day the trial shall be conducted after filing a petition and added the effect of subsequent convictions, judgments, or commitments suspends the requirements under the chapter. The bill added that behavioral abnormality is not due to unsound mind for purposes of Section 15-a, Article I, Texas Constitution, increased cost not to exceed \$2,500 for the trial, and added the judicial requirements of not only participation but compliance with treatment, tampering with GPS, and possession or use of alcohol, inhalants, or a controlled substance.

In 2005, the 79th Legislature SB 912 by Senator Florence Shapiro amended Health & Safety Code, Chapter 814 to add sexually violent offenses to include sexually motivated murder and capital murder. The bill transferred some of the Global Positioning Satellite (GPS) tracking responsibilities to case managers from the Department of Public Safety, required that the SVP shall reside in a facility under contract with CSOT, and allowed SVPs to be housed in Mental Health/Mental Retardation facilities. Additionally, under the HB 2292, the Texas Department of Health and the CSOT were consolidated into the Health and Human Services Commission umbrella in the Department of State Health Services.

In 2007, the 80th Legislature HB 2034 by Representative Kirk England was amended with SB 1198 (by Senator Florence Shapiro) amended Health & Safety Code, Chapter 814 so a judge is not subject to an objection other than an objection made under Section 74.053(d) of the Government Code and clarifies SPU civil division. The bill allowed the local prosecuting attorney to request SPU assist in the violation trial and that failure to comply with civil commitment may be prosecuted in the county of violation or Montgomery County. House Bill 8 by Representative Debbie Riddle required SVPs to pay for the GPS tracking if the SVP is not indigent. SB 1951 by Senator Wentworth created of 435th Judicial District Court in Montgomery County for civil commitment proceedings under Chapter 841, Health & Safety Code and criminal cases involving 841.085, Health & Safety Code, and Article 62.203, Code of Criminal Procedures. SB 1741 (by Senator Florence Shapiro) filed the bill to create a new state agency to perform the functions relating to the outpatient sexually violent predator treatment program that were performed by the CSOT. The bill died on the House floor prior to final readings.

In 2009, the 81st Legislature HB 2917 (by Representative Jim McReynolds/Senator Florence Shapiro) amended Government Code 411.110 to obtain criminal history records of current and potential employees.

In 2011, the 82nd Legislature , amended Health & Safety Code, Chapter 841 regarding the composition of the MDT to remove one member of the CSOT and one member from DSHS-Mental Health to add two members of OVSOM; requiring the person to comply with all written requirements imposed by the case manager or the office; increased the compensation for treatment providers not to exceed \$10,000; allows the office to enter into a memorandum of understanding with both DPS and local law enforcement for criminal complaints, warrants, apprehension, and arrest of the person; requires the office to provide GPS tracking in Travis, Bexar, and El Paso counties; and requires a correctional facility or secure correctional facility to notify the case manager prior to releasing the person. On June 17, 2011 the bill was signed by Governor Rick Perry with the effective date of September 1, 2011.

## **Purpose**

The purpose of OSVPTP is established in Health & Safety Code §841.001, “The legislature finds that a small but extremely dangerous group of sexually violent predators exists and that those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in repeated predatory acts of sexual violence. The legislature finds that the existing involuntary commitment provisions of Subtitle C, Title 7, are inadequate to address the risk of repeated predatory behavior that sexually violent predators pose to society. The legislature further finds that treatment modalities for sexually violent predators are different from the traditional treatment modalities for persons appropriate for involuntary commitment under Subtitle C, Title 7. Thus, the legislature finds that a civil commitment procedure for the long-term supervision and treatment of sexually violent predators is necessary and in the interest of the state.”

## **The Process**

Sixteen months prior to release from prison, Texas Department of Criminal Justice (TDCJ) identifies all sex offenders who have more than one sexually violent offense. Those cases are reviewed by a multidisciplinary team (MDT), which consists of representatives from the OVSOM, CSOT, TDCJ, TDCJ-Victim Services, DSHS Mental Health Division, and the Department of Public Safety (DPS). The MDT by statute:

1. assesses whether the person is a repeat sexually violent offender;
2. determines whether the person is likely to commit a sexually violent offense after release or discharge; and
3. recommends the person for an assessment for a behavioral abnormality.

The multidisciplinary team reviews an average of 35 cases per month.

**Note:** From 1999 to July 31, 2012, 45,028 sex offenders were initially screened by the TDCJ for more than one sexually violent offense. Of these 6,888 sex offenders were reviewed by the MDT and 1,325 were referred by the MDT for a behavioral abnormality assessment. Of those assessed, 919 (2%) were referred to the SPU for potential filing. Of the 45,028 originally screened, 258 (0.5%) sex offenders were civilly committed (Texas Department of Criminal Justice, Rehabilitation and Re-Entry Program, 2012).

If referred by the MDT, TDCJ then contracts with an expert to conduct the initial assessment, which includes a clinical interview, psychological testing, review of the risk assessments, institutional records, and all relevant medical and psychological records and reports. If a behavioral abnormality is identified, the case is referred to the Special Prosecution Unit (SPU) to determine whether to file a petition for a trial to seek a commitment of the individual. The SPU is responsible for initiating and pursuing a civil commitment.

If the SPU files a petition alleging a predator status and there is a determination that the SVP is indigent, the State Counsel for Offenders (SCFO) is notified and provides representation in the civil commitment proceeding. If SCFO is unable to represent, the court shall appoint other counsel.

All civil commitment trials are held in the 435<sup>th</sup> District Court of Montgomery County, Texas. A judge or twelve person jury must unanimously answer “yes” beyond a reasonable doubt to the following questions:

1. Is the person a repeat sexually violent offender?
2. Does the person suffer from a behavioral abnormality that makes him/her likely to engage in a predatory act of sexual violence?

If the judge or jury unanimously responds “yes” to both questions, the person is ordered into the Outpatient Sexually Violent Predator Treatment Program( OSVPTP) upon release from prison.

After the trial and prior to entering the program, the court coordinator identifies the county of residence for the judicial order. The court coordinator coordinates transportation and residential placement for the SVP. The court coordinator forwards all SVP documentation to the program's Central Office, Department of Public Safety, the assigned case manager, and treatment provider. Upon arrival at the residential facility, the case manager meets with the face-to-face visit with the SVP, explains the requirements, and activates the GPS tracking. The case manager makes additional appropriate referrals based on the SVP's needs.

The SVP is assessed by the licensed sex offender treatment provider, who conducts group, individual, and family therapy sessions, prepares the individual treatment plan, prepares the SVP for polygraph examinations, conducts or coordinates the penile plethysmograph, and makes appropriate referrals.

Each year the SVP has the right to petition the court for an unauthorized release from the OSVPTP. Every two years the SVP is afforded a biennial review. The judge shall set a hearing if the judge determines at the biennial review that a requirement imposed on the person under this chapter should be modified or probable cause exists to believe that the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence. The state must prove beyond a reasonable doubt that the behavioral abnormality has not changed. If the burden of proof is met, the SVP civil commitment will continue.

If the SVP fails to comply with the order of commitment the person may, at the discretion of the prosecutor's office, be charged with a 3rd degree felony, which may result in incarceration in the TDCJ-Correctional Institutional Division.

### **Statistics and Recidivism/Re-Offense Rates**

SVP Recidivism Rates: Recidivism rates are based upon information gathered from an arrest, a conviction, or incarceration. Recidivism may be based on a technical violation related to the civil commitment order, a sexual re-offense, or a new criminal offense.

As of August 31, 2012, there were 263 sexually violent predators that have been committed under Health & Safety Code Chapter 841. Of the 263:

- 158 resided in an approved location in the community (of these 3 have been committed to a mental state hospital and 1 to a state school);
- 105 were incarcerated in the Texas Department of Criminal Justice-Correctional Institutional Division (Note: this number is comprised of new commitments waiting initial release into the program and re-releases of SVPs incarcerated for parole violations and/or new civil commitment charges);
- 0 absconders; and
- 7 were deceased and are not counted in the total number of commitments.

Forty-four percent (44%) of SVPs have been convicted of new non-sexual offenses, (e.g., failure to comply with the civil commitment order), and were sentenced to the TDCJ-Correctional



Institutional Division, served county jail time, or received probation. Two percent (2%) of SVPs have been convicted of new non-sexual felony criminal offenses, (e.g., aggravated assault on peace officer, assault on a peace officer, criminal impersonation, retaliation, assault, failure to register, and failure to identify).

To date, none of the SVPs committed to the program have been charged with or convicted of a new sexual crime, which represents a **0% sexual re-offense rate**.

### **Civil Commitments by Fiscal Year**

Since civil commitment of the first SVPs in fiscal year (FY) 2001, the number of commitments remained relatively stable at 7-14 civil commitments per year through FY 2007. Additional funding for civil commitment trials was allocated to the Special Prosecutions Unit in FY 2011 and FY 2012, which resulted in 47 and 43 civil commitments respectively. Fifty trials are projected for FY 2013-2015.

### **Appropriations/Expenditures**

Texas is the only state that manages all SVPs in an outpatient setting. This model has proven to be more fiscally conservative than traditional inpatient programs while providing enhanced community protection. Additionally, “[W]hile [a Texas SVP’s] liberty is indeed restrained, the intrusion is far less restrictive than if he were confined in a secure facility (*In Re Commitment of Michael Fisher* No. 04-0112)”.

The OSVPTP was funded via an appropriation to the Texas Comptroller of Public Accounts. The total amount appropriated for FY 2011 is \$4,070,817 and total program costs for FY 2011 was \$3,421,524. Fiscal year 2011 performance measures reflect that the OSVPTP cost an average of \$31,250 per SVP per year.

The 82nd Legislature Regular Session House Bill 1 (General Appropriations Act) appropriated funds to the Texas Comptroller of Public Accounts Judiciary Section’s 2012-2013 appropriation in Strategy D.1.9. The total amount appropriated for FY 2012 is \$4,037,687 and FY 2013 \$4,766,511. Fiscal year 2012 performance measures reflect that the OSVPTP average cost was \$25,529 per SVP per year.

### **FY 14-15 Legislative Appropriations Request (LAR) and Exceptional Item (EI)-Projected New Commitments 50 per year**

FY14 LAR Base- \$4,402,099    EI- \$1,627,150

FY15 LAR Base- \$4,402,099    EI- \$2,500,163

### **Staff**

As of December 1, 2012, the program employed 1 executive director, 1 general counsel, 2 field staff managers, 1 court coordinator, 1 program specialist, 13 full time case managers (4 vacancies), and 1

administrative assistant IV and expects to add three to five additional positions in FY 2014-2015 to supervise the increased SVP caseloads.

### **Major Court Decisions**

June 23, 1997. The U.S. Supreme Court upheld inpatient civil commitment of sexually violent predators in *Kansas (Petitioner 95-1649) v. Leroy Hendricks (Petitioner 95-9075)*.

November 30, 2004. *In Re Commitment of Fisher*-Court of Appeals 13th District, the Texas Supreme Court upheld the constitutionality of the Texas SVP Act.

October 12, 2005. The U.S. Supreme Court denied the motion to hear *In Re Commitment of Fisher's* petition and finalized the successful defense of the Texas SVP Act.

## 83<sup>RD</sup> LEGISLATIVE RECOMMENDATIONS

### HEALTH & SAFETY CODE

Sec. 841.002. DEFINITIONS. In this chapter:

(11) "Treatment" means sex offender treatment as defined in Title 22, Texas Administrative Code, Chapter 810.

#### Sec. 841.084A. COST OF RESIDENTIAL FACILITY PLACEMENT.

Notwithstanding Section 841.146(c), a civilly committed person who is not indigent is responsible for the cost of the required by Section 841.082 and monthly shall pay to the office the amount that the office determines will be necessary to defray the cost of operating the service with respect to the person during the subsequent month.

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CODE OF CRIMINAL PROCEDURES, Art. 12.01. LIMITATIONS. FELONIES.

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward: Amend by adding to read as follows:

(1) no limitation:

(A) murder and manslaughter;

(B) sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code;

(C) sexual assault, if during the investigation of the offense biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained;

(D) continuous sexual abuse of young child or children under Section 21.02, Penal Code;

(E) indecency with a child under Section 21.11, Penal Code; **[or]**

(F) an offense involving leaving the scene of an accident under Section 550.021, Transportation Code, if the accident resulted in the death of a person; or

(G) a violation of a civil commitment requirement imposed under Health & Safety Code, Section 841.082.

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#### **GOVERNMENT CODE**

**Sec. 420A.002. OFFICE; GOVERNING BOARD.** (a) The Office of Violent Sex Offender Management is a state agency.

(b) The office is governed by a board composed of the following three members appointed by the governor:

(1) one member experienced in the management of sex offenders;

(2) one member experienced in the investigation or prosecution of sex offenses; and

(3) one member experienced in counseling or advocating on behalf of victims of sexual assault.

(c) Members of the board serve staggered **[two-year]** six year terms. Two members' terms expire February 1 of each even-numbered year and one member's term expires February 1 of each odd-numbered year.

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#### **OVSOM STAFF**

**Sec. 420A.008. STAFF.** The office may select and employ a general counsel, staff attorneys, and other staff necessary to perform the office's functions. Amended by adding to read as follows:

(a) Staff are employees of the Office and are not exempt from the at-will status due to the administrative attachment.

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Government Code. Sec. 552.117. EXCEPTION: CERTAIN ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION. Amend by adding to read as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number of the following person or that reveals whether the person has family members:

(3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175;

(6) an officer or employee of a community supervision and corrections department established under Chapter 76 who performs a duty described by Section 76.004(b), regardless of whether the officer or employee complies with Section 552.024 or 552.1175[.]  
and

(7) a current or former employee under Government Code 420A.008 that administer Health & Safety Code 841.007, regardless of whether the current or former employee complies with Section 552.1175.

Sec. 552.1175. CONFIDENTIALITY OF ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION OF PEACE OFFICERS, COUNTY JAILERS, SECURITY OFFICERS, AND EMPLOYEES OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE, OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT OR A PROSECUTOR'S OFFICE. (a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

(2) county jailers as defined by Section 1701.001, Occupations Code;

(3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;

- (4) commissioned security officers as defined by Section 1702.002, Occupations Code;
- (6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b);
- (7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure; [and]
- (8) police officers and inspectors of the United States Federal Protective Service [.] and
- (9) current or former staff under Government Code 420A.008 that administer Health & Safety Code, 841.007.